

1 **LENARD E. SCHWARTZER**
2850 S. Jones Blvd. Suite 1
2 Las Vegas, NV 89146-8308
(702) 307-2022

3 TRUSTEE
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8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re)	Case No. BK-S 12-23294 LBR
)	
11 JASON B. HOLZER,	)	IN CHAPTER 7 PROCEEDINGS
)	
12	)	MOTION TO COMPEL TURNOVER;
	)	REQUEST FOR SANCTIONS
13 Debtor(s))	
	)	Date: May 16, 2013
14 _____	)	Time: 11:00 a.m.
	)	Place: Foley Federal Bldg., Third Floor

15 **MOTION TO COMPEL TURNOVER OF TAX RETURN AND REQUEST FOR**
16 **SANCTIONS**

17 Lenard E. Schwartzer, the duly appointed Chapter 7 Trustee in the above referenced proceeding,
18 hereby moves this court for an order compelling the turnover of a copy of the Debtor(s)' 2012 federal
19 income tax return (the "tax return") and for sanctions of \$250.

20 This Motion is made and based upon the accompanying Memorandum of Points and
21 Authorities, the papers on file herein and any oral argument that the Court may entertain at the time of
22 any hearing on this motion.

23 **POINTS AND AUTHORITIES**

24 **FACTUAL BACKGROUND**

- 25 1. This case was commenced by the filing of a Chapter 7 petition on 11/30/12.
- 26 2. Prior years' federal tax returns and other information provided by the Debtor(s) revealed
- 27
- 28

1 the likelihood that the Debtor(s) will receive a refund for the year in which the Debtor(s) filed the
 2 Chapter 7 petition. At the §341a meeting, the Trustee notified the Debtor(s) that a copy of the 2012 tax
 3 return must be provided to the Trustee and that the refund must be turned over.

4 3. The Debtor(s) was notified again that a copy of the return was to be turned over to the
 5 Trustee by letter dated January 9, 2013, a copy of which is attached hereto, marked Exhibit "1" and
 6 incorporated herein by reference.

7 4. The Debtor(s) has failed to cooperate with the Trustee by failing to provide the Trustee
 8 with a copy of the return as required by 11 U.S.C. §521.

9 5. Either all or a portion of any 2012 tax refund constitutes property of the estate pursuant
 10 to 11 U.S.C. §541.

11 6. The Trustee now moves this Court for an order compelling turnover of the 2012 tax
 12 return and for sanctions of \$250.

13 LEGAL ARGUMENT

14 As set forth above, the Trustee directed the Debtor(s) to turnover a copy of the 2012 tax return.
 15 The Debtor(s) has failed to cooperate with the Trustee in the administration of the estate pursuant to
 16 11 U.S.C. §521 in that the Debtor(s) has not turned over a copy of the return.

17 Pursuant to 11 U.S.C. §521(a)(3), if a trustee is serving, it is the duty of debtors to cooperate
 18 with the Trustee as necessary to enable the trustee to perform the trustee's duties under this title.

19 §521 Debtor's duties

20 (a) The debtor shall

21 (3) if a trustee is serving in the case or an auditor serving under section
 22 586(f) of title 28, cooperate with the trustee as necessary to enable the trustee
 to perform the trustee's duties under this title.

23 Pursuant to In re Paige, 365 B.R. 632, 638-9 (Bankr.N.D. Tex 2007), a trustee may request
 24 sanctions if a debtor has failed to cooperate with the trustee, and the trustee is obligated to expend estate
 25 resources in pursuing the debtor's cooperation.

26 "A debtor may be sanctioned for failing to cooperate with the trustee, an obligation
 27 that encompasses surrender of estate assets, as required under the Bankruptcy Code.
In re Cochener, 360 B.R. 542 (Bankr.S.D.Tex.2007) (The debtor and the debtor's

son were sanctioned for failing to appear at the 341 meeting, refusing to cooperate with the trustee, and for allowing estate property to be damaged resulting in extensive losses to its value.). As the bankruptcy court said in In re Stinson, 269 B.R. 172 (Bankr.S.D.Ohio 2001).

(a) chapter 7 debtor has an affirmative duty to cooperate with the case trustee in the administration of the bankruptcy estate. This includes a duty to surrender to the trustee all property of the estate.... Where a debtor fails to cooperate with the case trustee, the trustee is then forced to expend estate resources in pursuing the debtor's cooperation, which results in the reduction of the distribution to creditors."

In re Paige, 365 B.R. 632, 638-9 (Bankr.N.D. Tex 2007)

CONCLUSION

Movant respectfully request this Court enter an Order compelling Debtor(s) to turnover to the trustee copies of Debtor(s)' 2012 tax return, within ten (10) days from serving the notice of entry of the order; and for a sanction of \$250 for failure to cooperate.

Pursuant to Local Rule 9021, a copy of the proposed order is attached hereto, marked Exhibit A.

Dated: April 16, 2013


LENARD E. SCHWARTZER, Trustee

DECLARATION OF TRUSTEE

I declare, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge, information and belief.

Dated: April 16, 2013


LENARD E. SCHWARTZER, Trustee

LENARD E. SCHWARTZER, TRUSTEE

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January 9, 2013

JASON HOLZER
913 WILLOW TREE DR., UNIT B
LAS VEGAS, NV 89128

Re: BK 12-23294 LBR

Dear Debtor(s):

I am the Trustee appointed in your bankruptcy case. You are required to provide me with a copy of your 2012 income tax return and turnover to me your 2012 income tax refund. Pursuant to Bankruptcy Code §521 you are required to cooperate with me.

Please provide me with a copy of your 2012 income tax return within ten days from the date you file it with the Internal Revenue Service, but no later than April 25, 2013. If you receive a refund, you are required to turnover your refund to me.

Please write your bankruptcy case number on your income tax return, and mail a copy of your return to my office. Upon receipt of your refund check, do not endorse it, just write your bankruptcy number on the refund check, and mail it to my office immediately. If you have your refund deposited in your bank account, you must send me your personal check for the amount of the income tax refund.

If I have not received a copy of your 2012 income tax return or a copy of a request for an extension of time to file your tax return by April 25, 2013, I will apply for an order from the Bankruptcy Court compelling turnover, and for a \$250 sanction. Please note that if you do not turnover your refund check, I will request that the Bankruptcy Court grant a judgment against you for the non-exempt portion of the refund plus a \$250 sanction and I will request the Office of the U.S. Trustee to revoke your discharge.

If the Internal Revenue Service notifies you that it will not be sending you the refund shown on your income tax return, you should send me a copy of that letter.

Thank you for your cooperation.

Very truly yours,

Lenard E. Schwartzer

LENARD E. SCHWARTZER
Trustee

cc:

JUDAH ZAKALIK
ZAKALIK & ASSOCIATES
4230 S DECATUR BLVD #200
LAS VEGAS, NV 89103

Exhibit "1"

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7 **LENARD E. SCHWARTZER**
2850 S. Jones Blvd. Suite 1
8 Las Vegas, NV 89146-8308
(702) 307-2022
9 TRUSTEE
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11 **UNITED STATES BANKRUPTCY COURT**
12 **DISTRICT OF NEVADA**

13 In re)	Case No. BK-S 12-23294 LBR
14 JASON B. HOLZER,	)	IN CHAPTER 7 PROCEEDINGS
15	)	ORDER: GRANTING MOTION TO
16	)	COMPEL TURNOVER
17 Debtor(s))	
18	)	Date: May 16, 2013
	)	Time: 11:00 a.m.
	)	Place: Foley Federal Bldg., Third Floor

19 The Trustee's Motion to Compel Turnover came on regularly for hearing before a United
20 States Bankruptcy Judge on May 16, 2013. Appearing at the hearing was the Trustee representing
21 himself, and there were no other appearances. No opposition having been filed and good cause
22 appearing therefor,

23 **IT IS HEREBY ORDERED** that Debtor(s) is ordered

24 1. to turnover to the Trustee a copy of Debtor(s)' 2012 U.S. Individual Income Tax
25 Return the later of
26 (a) within ten days of entry of this order, or
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Exhibit "A"

- 1 (b) within ten days from the filing of the tax return or, alternatively,
2 2. to deliver to the Trustee an affidavit stating the reason that the tax return has not
3 been filed within ten days of the entry of this order.
4 3. Pay to the Trustee \$250 within ten days of entry of this order.

5 Submitted by:

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7 LENARD E. SCHWARTZER
8 Trustee

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10 ALTERNATIVE METHOD re RULE 9021:

11 In accordance with Local Rule 9021, the Trustee submitting this document certifies that
12 the order accurately reflects the court's ruling and that (check one):

13 _____ The Court waived the requirement set forth in LR9021(b)(1).

14 _____ No parties appeared at the hearing or filed an objection to the motion.

15 _____ I have delivered a copy of this proposed order to all counsel who appeared at the
16 hearing, and any unrepresented parties who appeared at the hearing, and each has approved or
17 disapproved the order, or failed to respond, as indicated below [list each party and whether the
party has approved, disapproved, or failed to respond to the document]:

18 _____ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this
19 order with the motion pursuant to LR 9014(g), and that no party has objected to the form or
20 content of the order.

21 LENARD E. SCHWARTZER
22 Trustee

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